

AMENDED IN ASSEMBLY AUGUST 31, 2007

AMENDED IN SENATE APRIL 16, 2007

SENATE BILL

No. 691

Introduced by Senator Ashburn Calderon

February 23, 2007

~~An act to amend Section 1338.5 of the Health and Safety Code, relating to nurse assistant certification costs. An act to add Sections 21608.5 and 21610 to the Business and Professions Code, relating to junk dealers.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 691, as amended, ~~Ashburn Calderon. Nurse assistants. Junk dealers and recyclers: nonferrous material.~~

Existing law requires junk dealers and recyclers, as defined, to keep written records of all sales and purchases made in the course of their business. Existing law requires these records to include, among other things, the place and date of each sale or purchase of junk, a description of the item of junk, and the personal and vehicle information of the person purchasing or transporting the junk. Existing law exempts certain purchases of scrap metals by a junk dealer or recycler from these provisions. A violation of these provisions regulating junk dealers and recyclers is a crime.

This bill would prohibit a junk dealer or recycler from providing payment for nonferrous material, as defined, unless the payment is made by check, the check is provided no earlier than 3 days after the date of sale, and the dealer or recycler obtains certain identifying information, as specified, to be retained by the dealer or recycler for a certain period of time. The bill would specify various exceptions to these requirements and provide that these requirements do not apply

to the redemption of nonferrous materials of a certain value at a recycling center, as specified, or to coin dealers or automobile dismantlers. The bill would also prohibit a city, county, city and county, or a state agency from adopting reporting, identification, or payment requirements for transactions by junk dealers or recyclers involving nonferrous material.

Because a violation of the bill's provisions would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law requires a criminal record clearance to be conducted for all nurse assistants by the submission of fingerprint cards to the State Department of Health Services for processing at the Department of Justice, and requires completion of the criminal record clearance prior to issuance or renewal of a certificate. Existing law provides that the fee to cover the processing costs of the Department of Justice shall not exceed a specified amount. Effective July 1, 2007, these duties of the State Department of Health Services will be transferred to the State Department of Public Health.~~

~~Existing law requires each health facility that operates and is used as a clinical skills site for certification training, and each health facility, prior to hiring a nurse assistant applicant certified in another state or country, to arrange for and pay the cost of the fingerprint live-scan service and the Department of Justice processing costs for each applicant. Existing law prohibits health facilities from passing these costs through to nurse assistant applicants unless allowed by federal law.~~

~~This bill would require a health facility that is used as a clinical skills site for a certification training that is operated by specified entities or programs to keep a record of the total amount of the incurred costs that the health facility actually pays in the prior year, as prescribed. It authorizes a health facility to provide a copy of the record to the State Department of Public Health for reimbursement, contingent upon an appropriation in the annual Budget Act.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 21608.5 is added to the Business and*
2 *Professions Code, to read:*

3 21608.5. (a) *A junk dealer or recycler in this state shall not*
4 *provide payment for nonferrous material unless, in addition to*
5 *meeting the written record requirements of Sections 21605 and*
6 *21606, all of the following requirements are met:*

7 (1) *The payment for the material is made by check.*

8 (2) *The junk dealer or recycler provides the check no earlier*
9 *than three business days after the date of sale. The check may be*
10 *mailed to the seller at the address provided pursuant to paragraph*

11 (3) *or may be collected by the seller from the junk dealer or*
12 *recycler.*

13 (3) (A) *The junk dealer or recycler does one of the following:*

14 (i) *Obtains a photograph or video of the seller and a utility bill*
15 *addressed to the seller at an address other than a post office box*
16 *with a payment due date no more than two months old.*

17 (ii) *Obtains a copy of the valid driver's license of the seller*
18 *containing a photograph and an address of the seller.*

19 (iii) *Obtains a copy of a state or federal government-issued*
20 *identification card containing a photograph and an address of the*
21 *seller.*

22 (B) *The junk dealer or recycler shall preserve the photograph*
23 *or video and address or the copies obtained pursuant to*
24 *subparagraph (A) for a period of two years after the date of sale.*

25 (b) *The requirements of paragraphs (1) and (2) of subdivision*
26 *(a) shall not apply if, during any three-month period commencing*
27 *on or after the effective date of this section, the junk dealer or*
28 *recycler completes five or more separate transactions per month*
29 *with the seller and, in order for the requirements of paragraphs*
30 *(1) and (2) of subdivision (a) to continue to be inapplicable, the*
31 *seller must continue to complete five or more separate transactions*
32 *per month with the junk dealer or recycler.*

33 (c) *The requirement of paragraph (2) of subdivision (a) shall*
34 *not apply if, in addition to obtaining the identifying information*
35 *required in paragraph (3) of subdivision (a), the junk dealer or*
36 *recycler obtains a photograph or video of the nonferrous material*
37 *being purchased. This photograph or video shall be preserved for*
38 *a period of two years after the date of sale.*

1 (d) *This section shall not apply if, on the date of sale, the junk*
2 *dealer or recycler has on file or receives all of the following*
3 *information:*

4 (1) *The name, physical business address, and business telephone*
5 *number of the seller's business.*

6 (2) *The business license number or tax identification number*
7 *of the seller's business.*

8 (3) *A copy of the valid driver's license of the person delivering*
9 *the nonferrous material on behalf of the seller to the junk dealer*
10 *or the recycler.*

11 (e) *This section shall not apply to the redemption of nonferrous*
12 *material having a value of not more than twenty dollars (\$20) in*
13 *a single transaction, when the primary purpose of the transaction*
14 *is the redemption of beverage containers under the California*
15 *Beverage Container Recycling and Litter Reduction Act, as set*
16 *forth in Division 12.1 (commencing with Section 14500) of the*
17 *Public Resources Code.*

18 (f) *This section shall not apply to coin dealers or to automobile*
19 *dismantlers, as defined in Section 220 of the Vehicle Code.*

20 (g) *For the purposes of this section, "nonferrous material"*
21 *means copper, copper alloys, stainless steel, or aluminum, but*
22 *does not include beverage containers, as defined in Section 14505*
23 *of the Public Resources Code, that are subject to a redemption*
24 *payment pursuant to Section 14560 of the Public Resources Code.*

25 SEC. 2. *Section 21610 is added to the Business and Professions*
26 *Code, to read:*

27 21610. *This article shall not prohibit the adoption, amendment,*
28 *or enforcement of an ordinance or resolution by a city, county, or*
29 *city and county relating to junk dealers or recyclers that is*
30 *consistent with this article, except that no city, county, city and*
31 *county, or state agency shall adopt reporting, identification, or*
32 *payment requirements for transactions by junk dealers or recyclers*
33 *involving nonferrous material, as defined in Section 21608.5.*

34 SEC. 3. *No reimbursement is required by this act pursuant to*
35 *Section 6 of Article XIII B of the California Constitution because*
36 *the only costs that may be incurred by a local agency or school*
37 *district will be incurred because this act creates a new crime or*
38 *infraction, eliminates a crime or infraction, or changes the penalty*
39 *for a crime or infraction, within the meaning of Section 17556 of*
40 *the Government Code, or changes the definition of a crime within*

1 *the meaning of Section 6 of Article XIII B of the California*
2 *Constitution.*

3 ~~SECTION 1. Section 1338.5 of the Health and Safety Code is~~
4 ~~amended to read:~~

5 ~~1338.5. (a) (1) (A) A criminal record clearance shall be~~
6 ~~conducted for all nurse assistants by the submission of fingerprint~~
7 ~~images and related information to the state department for~~
8 ~~processing at the Department of Justice. The licensing and~~
9 ~~certification program shall issue an All Facilities Letter (AFL) to~~
10 ~~facility licensees when both of the following criteria are met:~~

11 ~~(i) The program receives, within three business days, 95 percent~~
12 ~~of its total responses indicating no evidence of recorded criminal~~
13 ~~information from the Department of Justice.~~

14 ~~(ii) The program processes 95 percent of its total responses~~
15 ~~requiring disqualification in accordance with paragraph (2) of~~
16 ~~subdivision (c) of Section 1337.9, no later than 45 days after the~~
17 ~~date that the report is received from the Department of Justice.~~

18 ~~(B) After the AFL is issued, licensees shall not allow nurse~~
19 ~~assistant trainees or newly hired nurse assistants to have direct~~
20 ~~contact with clients or residents of the facility prior to completion~~
21 ~~of the criminal record clearance. A criminal record clearance shall~~
22 ~~be complete when the department has obtained the person's~~
23 ~~criminal offender record information search response information~~
24 ~~from the Department of Justice and has determined that the person~~
25 ~~is not disqualified from engaging in the activity for which clearance~~
26 ~~is required. Notwithstanding any other provision of law, the~~
27 ~~department may, without taking regulatory action pursuant to~~
28 ~~Chapter 3.5 (commencing with Section 11340) of Part 1 of Division~~
29 ~~3 of Title 2 of the Government Code, implement, interpret, or make~~
30 ~~specific this paragraph by means of an AFL or similar instruction.~~
31 ~~The fee to cover the processing costs of the Department of Justice,~~
32 ~~not including the costs associated with capturing or transmitting~~
33 ~~the fingerprint images and related information, shall not exceed~~
34 ~~thirty-two dollars (\$32) per submission.~~

35 ~~(C) An applicant or certificate holder who may be disqualified~~
36 ~~on the basis of a criminal conviction shall provide the department~~
37 ~~with a certified copy of the judgment of each conviction. In~~
38 ~~addition, the individual may, during a period of two years after~~
39 ~~the department receives the criminal record report, provide the~~
40 ~~department with evidence of good character and rehabilitation in~~

1 accordance with subdivision (d) of Section 1337.9. Upon receipt
2 of a new application for certification of the individual, the
3 department may receive and consider the evidence during the
4 two-year period without requiring additional fingerprint imaging
5 to clear the individual.

6 (D) The department's Licensing and Certification Program shall
7 explore and implement methods for maximizing its efficiency in
8 processing criminal record clearances within the requirements of
9 law, including a streamlined clearance process for persons who
10 have been disqualified on the basis of criminal convictions that do
11 not require automatic denial pursuant to paragraph (2) of
12 subdivision (a) of Section 1337.9.

13 (2) (A) Upon enrollment in a training program for nurse
14 assistant certification, and prior to direct contact with residents, a
15 candidate for training shall submit a training and examination
16 application and the fingerprint cards to the state department to
17 receive a criminal record review through the Department of Justice.
18 Submission of the fingerprints to the Federal Bureau of
19 Investigation shall be at the discretion of the state department.

20 (B) An applicant and any other person specified in this
21 subdivision, as part of the background clearance process, shall
22 provide information as to whether or not the person has any prior
23 criminal convictions, has had any arrests within the past 12-month
24 period, or has any active arrests, and shall certify that, to the best
25 of his or her knowledge, the information provided is true. This
26 requirement is not intended to duplicate existing requirements for
27 individuals who are required to submit fingerprint images as part
28 of a criminal background clearance process. Every applicant shall
29 provide information on any prior administrative action taken
30 against him or her by any federal, state, or local government agency
31 and shall certify that, to the best of his or her knowledge, the
32 information provided is true. An applicant or other person required
33 to provide information pursuant to this section that knowingly or
34 willfully makes false statements, representations, or omissions
35 may be subject to administrative action, including, but not limited
36 to, denial of his or her application or exemption or revocation of
37 any exemption previously granted.

38 (3) Each health facility that operates and is used as a clinical
39 skills site for certification training, and each health facility, prior
40 to hiring a nurse assistant applicant certified in another state or

1 country, shall arrange for and pay the cost of the fingerprint
2 live-scan service and the Department of Justice processing costs
3 for each applicant. A health facility may not pass these costs
4 through to nurse assistant applicants unless allowed by federal law
5 enacted subsequent to July 12, 2006. A health facility that is used
6 as a clinical skills site for a certification training program that is
7 operated through a community college, adult education program,
8 or a regional occupational center or program shall keep a record
9 of the fingerprint live-scan service and the Department of Justice
10 processing costs that it incurs on and after August 1, 2006. This
11 health facility may then provide a copy of the record to the State
12 Department of Public Health in order to apply for direct
13 reimbursement to recover these costs. Contingent upon an
14 appropriation by the Legislature in the annual Budget Act, the
15 department shall reimburse the total amount of the incurred costs
16 that the health facility actually paid in the prior year, except that
17 the costs paid in 2007 shall also include the costs paid in 2006 for
18 costs incurred between August 1, 2006, and December 31, 2006,
19 inclusive. A health facility that receives this reimbursement shall
20 properly record it as an offset against the facility cost reported in
21 the integrated long-term care disclosure and the Medi-Cal cost
22 report required by Section 128730.

23 (b) The use of fingerprint live-scan technology implemented
24 by the Department of Justice by the year 1999 shall be used by the
25 Department of Justice to generate timely and accurate positive
26 fingerprint identification prior to nurse assistant certification and
27 prior to direct contact with residents by the nurse assistant
28 applicant. The department shall explore options to work with
29 private and governmental agencies to ensure that licensees have
30 adequate access to electronic transmission sites, including requiring
31 the department to maintain a contract for electronic transmission
32 services in each of the district offices where facilities have
33 indicated problems with timely access to electronic transmission
34 sites or consistent delays of more than three business days in
35 obtaining appointments for electronic transmission services through
36 a private entity, government agency, or law enforcement agency.

37 (c) The state department shall develop procedures to ensure that
38 any licensee, direct care staff, or certificate holder for whom a
39 criminal record has been obtained pursuant to this section or

~~Section 1265.5 or 1736 shall not be required to obtain multiple criminal record clearances.~~

~~(d) If the department is experiencing a delay in processing the renewal of the certified nursing assistant's certification at the time of the expiration of the certified nursing assistant's certification, the department may extend the expiration of the certified nursing assistant's certification for six months.~~

~~(e) If, at any time, the department determines that it does not meet the standards specified in clauses (i) and (ii) of subparagraph (A) of paragraph (1) of subdivision (a), for a period of 90 consecutive days, the requirements in paragraph (1) of subdivision (a) shall be inoperative until the department can demonstrate it has met those standards for a period of 90 consecutive days.~~

~~(f) During any time in which the requirements of paragraph (1) of subdivision (a) are inoperative, facilities may allow newly hired nurse assistants to have direct contact with clients or residents of the facility after those persons have submitted live scan fingerprint images to the Department of Justice, and the department shall issue an AFL advising facilities of this change in the statutory requirements.~~

~~(g) Notwithstanding any other provision of law, the department is authorized to provide an individual with a copy of his or her state or federal level criminal offender record information search response as provided to that department by the Department of Justice if the department has denied a criminal background clearance based on this information and the individual makes a written request to the department for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in their written request. The department shall retain a copy of the individual's written request and the response and date provided.~~